

Boris Avramski, Esq.
Nevada Bar No. 11350
AVRAMSKI LAW, PC
4640 W. Charleston Blvd.
Las Vegas, NV 89102
Phone: (702) 685-3618
Fax: (702) 664-0555
E-mail: bkhelppvegas@yahoo.com
Attorney for debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

**MOTION TO VACATE ORDER VACATING THE AUTOMATIC STAY AS TO
U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE UNDER POOLING AND
SERVICING AGREEMENT DATED AS OF DECEMBER 1, 2006, MASTR ASSET
BACKED SECURITIES TRUST 2006-HE5 MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2006-HE5**

19 FRANCES HUERTA, Debtor, by and through her attorney of record, Boris Avramski,
20 Esq., from Avramski Law, PC, and move the Court pursuant to Rule 9024 of the Bankruptcy
21 Rules and Rule 60 of the Federal Rules of Civil Procedure for an order to VACATE THE
22 ORDER VACATING THE AUTOMATIC STAY AS TO U.S. BANK NATIONAL
23 ASSOCIATION AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT
24 DATED AS OF DECEMBER 1, 2006, MASTR ASSET BACKED SECURITIES TRUST 2006-
25 HE5 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-HE5 (hereinafter “US
26 BANK”) entered by the Court in the above matter.

27 | ///

28 | //

1 Dated this 5th day of January, 2010.

2 Respectfully submitted.

3
4 /s/BORIS AVRAMSKI, ESQ.
5 Boris Avramski, Esq.
6 Attorney for debtor
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **POINTS AND AUTHORITIES**

2 **THE COURT MAY RELIEVE A PARTY FROM AN ORDER DUE TO**
 MISTAKE, INADVERTENCE, SURPRISE OR EXCUSABLE NEGLECT.

3
 Pursuant to Bankruptcy Rule 9024, FRCP 60(b) applies where a party requests relief
 4 from judgment or order entered by the Bankruptcy Court. FRCP 60(b) states that “[o]n motion
 5 and upon such terms as are just, the Court may relieve a party or a party's legal representative
 6 from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence,
 7 surprise, or excusable neglect...”

8 **STATEMENT OF FACTS**

- 9 1. Debtor filed the instant Chapter 13, Case Number 09-23716, on July 30, 2009.
- 10 2. On or about October 9, 2009, US BANK filed a motion to vacate the automatic
 stay as to debtor's primary residence located at 4617 Alta Dr., Las Vegas, NV 89107.
- 11 3. On November 25, 2009, a hearing was held on US BANK's Motion for relief
 from the automatic stay and same motion was granted by the Court.
- 12 4. The pre-petition arrears and the post-petition August, 2009, and September, 2009,
 payments to HOMEQ SERVICING, servicer for US BANK are included in the Amended
 Chapter 13 Plan Number 2. (See Amended BK Plan Number 2 attached hereto as Exhibit “1”).
- 13 5. Debtors have provided proof of post-petition payments for October, 2009, and
 November, 2009. (See Proof of Mortgage Payments attached hereto as Exhibit “2”).
- 14 6. Debtors advised counsel that Debtors can immediately tender the December,
 2009, mortgage payment to HOMEQ SERVICING, servicer for US BANK if the Court
 reimposes the stay as requested herein.

22 WHEREFORE, the Debtors now request that Your Honor:

- 23 1. Vacate the Order Vacating the Automatic Stay as to US BANK;
- 24 2. Reinstate the automatic as to US BANK;
- 25 3. Compel US BANK to accept future payments from the Debtors;
- 26 4. Compel US BANK to provide an accounting of how all post-petition payments
 made by the Debtors have been applied since the instant Chapter 13 filing;

1 5. Compel US BANK to provide a reinstate amount, if any, to the Debtors within 10
2 days;

3 6. Grant such other relief as Your Honor finds appropriate.

4

5 Dated this 5th day of January, 2010.

6

7

8 /s/Boris Avramski, Esq.

9 Boris Avramski, Esq.
10 Nevada Bar No. 11350
11 AVRAMSKI LAW, PC
12 4640 W. Charleston Blvd.

13 Las Vegas, NV 89102

14 Phone: (702) 685-3618

15 Fax: (702) 664-0555

16 E-mail: bkhelpvegas@yahoo.com

17

18

19

20

21

22

23

24

25

26

27

28